

BS00097 CIP 1  
U.S. Application No. 10/802,085 Examiner Gauthier, Art Unit 2645  
RCE in Response to December 21, 2006 Final Office Action

### REMARKS

In response to the final Office Action dated December 21, 2006, the Assignee respectfully requests continued examination and reconsideration based on the above amendments and on the following remarks.

Claims 1-5, 8-12, 15-16, and 18-22 are pending in this application. Claim 17 has been canceled without prejudice or disclaimer and, instead, incorporated into independent claim 9.

The United States Patent and Trademark Office (the "Office") rejected claim 22 under 35 U.S.C. § 101 for claiming non-statutory subject matter. Claims 1-5, 8-12, and 15-21 were rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,310,944 to Brisebois *et al.*

The pending claims, however, are not anticipated. As the following paragraphs explain, the pending claims recite features that are not taught or suggested by *Brisebois*. The § 102 (e) rejection, therefore, must fail.

#### Rejection of Claim 22 under § 101

Claim 22 was rejected under 35 U.S.C. § 101 for claiming non-statutory subject matter. Claim 22, however, has been amended to recite a "*computer program product comprising processor-executable instructions*." Claim 22 then recites the same features as independent claims 1 and 23. The Assignee thus respectfully asserts that claim 22 fully complies with the patent laws.

#### Rejection of Claims Under 35 U.S.C. § 102

The Office rejects claims 1-5, 8-12, 15-16, and 18-22 under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent 6,310,944 to Brisebois *et al.* A claim, however, is anticipated only if

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each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8<sup>th</sup> Edition) (hereinafter "M.P.E.P.").

The pending claims are not anticipated. Claims 1-5, 8-12, 15-16, and 18-22 recite, or incorporate, features that are not taught or suggested by *Brisebois*. All the independent claims, for example, recite "*querying a profile to determine whether the caller identification information matches an entry in a list of caller identification information.*" Support for such features may be found in the as-filed Specification at paragraphs [0014] and [0015]. All the independent claims recite "*when a match is found, then accessing a database of pre-created text messages, the database storing a pre-created text message having a common association between the receiving party and the caller identification information.*" Support for such features may be found in the as-filed Specification at paragraph [0015]. Moreover, independent claim 9 additionally recites "*receiving a call for a receiving party and a time of day of receipt.*"

The patent to *Brisebois et al.* cannot anticipate these features. Examiner Gauthier is correct — *Brisebois* teaches "context information" that is associated with caller identification information. *See, e.g.,* U.S. Patent 6,310,944 to *Brisebois et al.* (Oct. 30, 2001) at column 6, lines 50-55. Yet no where does *Brisebois* teach "*querying a profile to determine whether the caller identification information matches an entry in a list of caller identification information.*" While *Brisebois* does mention "name and number identification" that can be delivered to the called party, *id.* at column 2, lines 44-46, *Brisebois* is entirely silent to "*querying a profile to determine whether the caller identification information matches an entry in a list of caller identification information.*" The patent to *Brisebois et al.*, then, fails to disclose all the features recited by the independent claims.

The pending claims, then, cannot be anticipated by *Brisebois*. Independent claims 1, 9, 21, and 22 each recite features that are not disclosed by *Brisebois*. These independent claims, therefore, cannot be anticipated by *Brisebois*. The dependent claims incorporate the same

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distinguishing features, so the dependent claims cannot be anticipated. Examiner Gauthier is thus respectfully requested to remove the § 102 rejections of claims 1-5, 8-12, 15-16, and 18-22.

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If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Scott P. Zimmerman', with a stylized flourish at the end.

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